

SUMMARY OF PUBLIC COMMENTS FOR 15-DAY PUBLIC COMMENT PERIOD AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to adopt Section 547.60.2 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 15-day public comment period on this rulemaking action was held from September 25, 2020, through October 13, 2020. The comments received during the first 15-day public comment period were taken under submission and considered. A summary of those comments and the Board's responses are below.

II.

Summary of Written Comments from Kelli Nordli, Senior Attorney, Office of Systems Integration Department (OSI)

Comment 1: Notice Content Requirements

The list of required elements in the text differs slightly from the list of elements that DGS recommends to be included in the notice to the unions. DGS has provided this guidance to departments since 2014, so many departments have already built their notification practices around meeting these requirements. In order to reconcile these similar but different notice requirements OSI recommends adding "the applicable exemption criteria under Government Code section 19130(b)" to DGS's list.

In addition, the department may not know the exact value of the contract 20 days prior to execution. This is because the procurement may still be ongoing, and the department may not have evaluated cost offers yet. OSI would recommend modifying the language to require the estimated value of the contract as DGS recommends, rather than the actual value.

In sum, OSI proposes that the list of required elements needed to be provided in the notice should be rewritten as follows:

- The type of work proposed,
- Estimated value of the contract,
- Bargaining units notified,
- Term of the contract,
- The anticipated date the contract will be fully executed, and
- The applicable exemption criteria under Government Code section 19130, subdivision (b).

Building on the notice elements established by DGS eliminates confusion that might otherwise arise between conflicting terminologies and makes it easier for departments to comply because it simply adds one additional element to the current DGS recommended notice requirements.

Comment 2: 20 Day Notice Period

For contracts justified under Government Code section 19130, subdivision (b), the law does not require that a union file a contract challenge before a contract is executed; a union is not required to file a contract challenge within any specific deadline (other than before the contract has expired). Therefore, it is unclear why any notice period greater than what is set forth in Government Code section 19132 (prior to contract execution) is needed.

OSI believes a 20-day notice period is unreasonable and should match other SPB timeframes. For example, a permanent employee can be dismissed from state service with only five working days' notice (see 2 CCR §52.6(a)). Notice of a contract or amendment should not be four times longer than the notice that must be provided to employees that are subject to SPB's disciplinary process.

Response 1:

The Board thanks and appreciates OSI for its feedback to this regulatory package. The Board will incorporate some changes including units notified, anticipated value, and anticipated contract execution date. In order to be consistent with DGS guidelines, the Board will make the minor changes described in Response 2 (below) to the proposed regulatory text.

Response 2:

In an effort to provide clarity to the 20-day timeline, the Board has defined "days" as "calendar days". The intent of the proposed regulation is for appointing powers to provide notice to unions at least 20 calendar days prior to execution of the contract. Anything less does not allow unions a meaningful amount of time to review before execution of the contract.

III.

Summary of Written Comments from SEIU, Anne M, Giese, Chief Counsel

Comment 1: SEIU suggests that SPB should expand on "type of work" to "description of work".

Given the high volume of state contracting, and the tendency of many state Departments to minimize or avoid the provision of relevant details, it is important to note the difference between merely requiring a statement of the type of work to be performed versus requiring

a brief description of the work to be performed. SEIU believes those are two distinctly different metrics which should both be required. The "type of work" is likely to be reduced to the bare minimum - e.g. IT services. However, also requiring a brief description would further illuminate whether, for example, if auditors are to perform the proposed work, the "type of work" would be auditing services, whereas a brief description of the work would include something along the lines of "forensic auditing of the "x" program."

The requirements of this regulation should optimize the benefit of the twenty day notice period before contract execution. If the contract is vague or abstract, as is often the case, it will take the union considerably longer than the notice period to determine whether the contract implicates civil service work. The natural course of this determination usually includes a public records act request and production of documents that occurs well after twenty days. For these reasons, the description should include enough detail to easily enable the union to ascertain whether the contract encompasses civil service work within its bargaining units.

Response:

The Board thanks and appreciates SEIU's feedback to this regulatory package. The Board will change "type of work" to "description of work to be performed".